

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

The Assisted Living Group, Inc.	:	CIVIL ACTION
and Samuel Bohorad and Ann	:	
Bohorad, by their next friend	:	
Stephen Golden,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	No. 97-3427
Upper Dublin Township,	:	
	:	
Defendant.	:	

MEMORANDUM

Francis Prendergast, Elaine C. Valenti, Chester Derbyshire, and William Berlingh have filed a renewed Motion for Reconsideration, pursuant to Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1, of my order of July 23, 1997 denying their Motion for Intervention. For the reasons set forth below, the motion will be denied.

I. INTRODUCTION

Plaintiffs, who plan to build an assisted-living residence for elderly people, filed this action alleging that defendant's zoning practices with respect to the proposed site violate the Fair Housing Act and the Americans with Disabilities Act. Movants are the owners of residential properties located near the proposed site who oppose the construction of such a facility.

On June 13, 1997, movants' filed a Motion to Intervene either by right or permission pursuant to Federal Rule of Civil Procedure 24. I denied the Motion to Intervene by memorandum and order entered July 23, 1997. On August 14, 1997, I denied

movants' Motion for Reconsideration of that order. In the present motion, the movants again seek reconsideration of their Motion to Intervene. The only additional argument movants present to buttress their position that they should be permitted to intervene is their contention that alleged on-going settlement negotiations between the parties somehow establish a right to intervene.

II. STANDARD OF REVIEW

The standards controlling a motion for reconsideration are set forth in Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1. "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985). The moving party must establish one of three grounds: (1) the availability of new evidence not previously available; (2) an intervening change in controlling law; or (3) the need to correct a clear error of law or to prevent manifest injustice. Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). A party may not submit evidence which was available to it prior to a court's grant of summary judgment. Id. at 97. A motion for reconsideration is also not properly grounded on a request that a court rethink a decision it has already made. Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993).

III. ANALYSIS

In the present motion, movants again request that I

reconsider my earlier order denying their Motion to Intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2), or to intervene permissively pursuant to Federal Rule of Civil Procedure 24(b)(2).¹ In support of their Motion for Reconsideration, movants again argue that the moving parties' interests in their property and surrounding neighborhood will be directly affected by the outcome of this litigation and that these interests will not be adequately represented by the defendant, Upper Dublin Township.

These arguments represent nothing more than a rehash of those arguments previously advanced in both the original Motion for Intervention (Document No. 6) and the movants' first Motion for Reconsideration (Document No. 17). I have already fully considered and rejected these arguments on both occasions.

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration is not properly grounded on a request that a court reconsider repetitive arguments that have already been fully examined by the court or a request to raise arguments that could have previously been asserted. Id.

Movants have not come forward with any newly discovered

¹ It should be noted that movants' motion is untimely. On August 29, 1997, I entered an order staying this action until further notice. Despite the fact that movants' have filed their motion before the stay is lifted, I will exercise my discretion to address the merits of their motion.

evidence, do not cite an intervening change in controlling law and fail to point out any clear error of law or manifest injustice. Movants merely seek to present identical arguments and issues that I have already fully considered.

The only additional argument movants present to support their position that they should be permitted to intervene is their contention that alleged on-going settlement negotiations between the parties and the resulting proposed settlement somehow establishes a right to intervene. Movants argue that the settlement negotiations support their prior contention that Upper Dublin Township is not adequately representing their interests in this litigation, an argument that I already considered and rejected.²

Movants allege that settlement negotiations were held before Magistrate Judge Scuderi, although movants were not in attendance at the settlement conference and have absolutely no record setting forth the substance of such negotiations. Movants now argue that the fact a settlement conference was held should confer upon them intervenor status. I do not agree. The movants fail to assert any clear reason why the mere fact that Upper Dublin Township may have participated in settlement negotiations

² Movants, at no time prior to filing their second Motion for Reconsideration, asserted the argument that the possibility of settlement might adversely affect their interests. A motion for reconsideration may not advance new facts, issues, or arguments not previously presented to the court. Smith, F.R.D. at 97. This reason alone would constitute grounds for denial of movants' Motion for Reconsideration. I will, however, exercise my discretion to deny movants' argument on the merits.

establishes a right for movants to intervene in this action. This is an action based on the federally protected rights of disabled Americans under the Fair Housing Act and Americans with Disabilities Act and is not a zoning matter. The fact that movants' interests may be affected in some manner by plaintiffs assertion of these federally protected rights does not confer upon the movants intervenor status any more than any other citizen. While movants may have had a right to intervene in the related state zoning action, they do not have such a right in this action based on federally protected rights.

Because movants have not come forward with any newly discovered evidence, do not cite an intervening change in controlling law and fail to point out any clear error of law or manifest injustice, I will deny movants' Motion for Reconsideration.

An appropriate order follows.

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	:	No. 97-3427
Upper Dublin Township,	:	
	:	
Defendant	:	

ORDER

It is **ORDERED** that the Motion for Reconsideration of Francis Prendergast, Elaine C. Valenti, Chester Derbyshire and William Berlinghof (filed Document No. 22) is **DENIED**.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

December 2, 1997